



Department of Justice

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JUSTICE DEPARTMENT CHARGES MICROSOFT WITH VIOLATING 1995 COURT ORDER

Asks Court to Impose \$1 Million a Day Fine if Violation Continues

WASHINGTON, D.C. -- The Department of Justice asked a federal court today to hold Microsoft Corporation--the world's dominant personal computer software company--in civil contempt for violating terms of a 1995 court order barring it from imposing anticompetitive licensing terms on manufacturers of personal computers.

The petition filed today by the Department's Antitrust Division alleges that Microsoft violated the court order by requiring PC manufacturers to license and distribute Microsoft's Internet browser, called Internet Explorer, as a condition of licensing Microsoft's Windows 95. Most PC makers preinstall Windows 95--the dominant PC operating system--at the factory on the PCs they sell.

"Microsoft is unlawfully taking advantage of its Windows monopoly to protect and extend that monopoly and undermine consumer choice," said Attorney General Janet Reno.

The Department brought today's action to enforce the earlier court order, and to prevent Microsoft from being able to expand and protect its monopoly in the PC operating system market by

anticompetitive means. The Department also wants to ensure that PC manufacturers and consumers will be able to choose among competing software products.

"Our main concern is that by violating the court order, Microsoft is using an unlawful advantage to beat back an important competitive challenge to its Windows monopoly," said Joel I. Klein, Assistant Attorney General in charge of the Department's Antitrust Division. "Even as we go forward with this action today," Klein added, "we also want to make clear that we have an ongoing and wide-ranging investigation to determine whether Microsoft's actions are stifling innovation and consumer choice."

Much of Microsoft's market power today results because most applications programs for PCs--programs such as word processing, spread sheets and money managers--are written to work with Microsoft's Windows 95 PC operating system, the Department said. Unfettered competition among Internet browser products could lead to development of a computer environment in which business and consumer applications would work regardless of which operating system was installed on the PC. Software companies are currently developing applications that use an Internet browser as the user interface and work on other operating systems as well as with Windows 95.

Microsoft's operating system is installed on more than 80 percent of the nation's PCs, and preinstallation on PCs at the factory is Microsoft's main distribution channel.

Under the 1995 court order, Microsoft is prohibited from forcing computer makers to license any other Microsoft product as a condition of licensing Windows 95. Many PC manufacturers want the ability to choose freely among competing software products when they decide what to package with their PCs in order to offer their customers the best mix of software products available.

The petition charges that Microsoft has conditioned licenses to Windows 95 on manufacturers' licensing of Internet Explorer and that it has denied manufacturers' requests not to ship Internet Explorer on new PCs with Windows 95.

The Department stressed that it is not taking sides in the "browser war" between Microsoft and its rival, Netscape Communications Corporation, or in any emerging competition between Windows and other products.

"Microsoft is not entitled to require computer manufacturers and consumers to take Internet Explorer when they license Windows 95," said Klein. "Each of Microsoft's products should compete on its own merits."

Klein stressed, however, that today's action in no way prevents consumers or PC manufacturers from voluntarily choosing to obtain Internet Explorer and Windows 95, either together or separately, if they so wish.

In its petition, the Department asked the court:

- To stop Microsoft from requiring PC manufacturers to accept Internet Explorer as a condition of receiving Windows 95.
- To require Microsoft to notify consumers of PCs that have Windows 95 that they are not required to use Internet Explorer, that they are free to use any compatible Internet browser, and to give consumers simple instructions about how to

remove the Internet Explorer icon from their PC desktop if they choose.

- To impose large daily fines--\$1 million--on Microsoft if it continues to violate the court's order.

- To strike down broad portions of non-disclosure agreements that Microsoft requires those with whom it does business to sign.

The non-disclosure agreements may deter companies and individuals from coming forward voluntarily to provide information about Microsoft to the Department. Moreover, they sometimes require signatories to notify Microsoft first before complying with the Department's formal requests, or even court orders, for such information.

Microsoft has advised the Department that it would not insist on prior disclosure when the Department approaches companies or individuals and assures them that it will keep information confidential. But, this informal agreement, Klein said, does not address the concerns of parties who wish to come forward voluntarily.

Klein stressed the importance of full, voluntary disclosure of information relevant to the Department's larger investigation of Microsoft's practices. He expressed concern that the broad non-disclosure agreements could possibly hamper its investigation and indicated that, to remove any possible impediment, even if unintended, the Department was seeking a court order.

"We need a court order to clear the air here so that anyone with relevant information will feel free to come talk to the Department without any fear of intimidation or reprisal," Klein

said. "We will not let Microsoft or anyone else burden that fundamental right."

Today's petition was filed in U.S. District Court for the District of Columbia, where the 1995 consent decree was entered.

Microsoft will have an opportunity to respond to the Department's petition in writing within 11 days. At that time, the judge will decide whether a hearing is appropriate.

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